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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,982	08/26/2003	Firouzeh Keshmiri	053182-9007-02	6724
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MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			EXAMINER KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/649,982

Applicant(s)

KESHMIRI, FIROUZEH

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant has amended claim 1 in the paper entered 7/18/05. Pending claim 1-5 are examined below.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,758,464 to Hatton in view of U.S. Patent No. 5,002,620 to King as in the previous office action as in the previous office action.

Regarding claim 1, Hatton discloses a retaining wall having a base made of blocks (fig. 2: see bottom row of blocks), a wall assembly made of blocks and a plurality of spaced apart vertically elongated reinforcing strips (fig. 2: 17) secured to the face by a plurality of fasteners (fig. 2: 19) comprised of nails or screws directly engaged to the wall (column 3: lines 59-65) which extend through the strips into the blocks. However, Hatton does not disclose the blocks as being made of fiber reinforced cellular cementitious material. King discloses the use of a fiber reinforced cellular cementitious material (abstract, line 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Morton by using a fiber concrete, as disclosed by King, in order to increase the strength of the blocks. In addition, Hatton does not disclose the use of fasteners which are commonly used with lumber. However, it would have been obvious to use such fasteners in place of masonry fasteners, as masonry fasteners may be used as a functional equivalent.

Regarding claim 2, King discloses the fiber concrete as being made from a cementitious material mixed with water, fiber (column 1, lines 64-65) and an aerating material (column 1, lines 66-67).

Regarding claim 3, Hatton in view of King discloses the basic claim structure of the instant application but does not disclose specific percentages of the combined materials. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claim 4, King discloses the cement as being made of ash and silica (column 1, line 65) but does not disclose specific percentages of the materials. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Claim 5 is rejected for reasons cited in the rejections of claims 2 and 4.

### ***Response to Arguments***

Applicant's arguments filed 7/18/05 are not persuasive. Portions of the applicant's argument are directed to the newly added limitation regarding the consistency of the material which allows a fastener to be driven in the same manner as a fastener driven into lumber. The applicant should note that there are many ways of driving a fastener into lumber. For example, a hammer, a hydraulic power hammer, staplers, and various other means. The applicant has not claimed any limitations to this consistency to

structurally differentiate between the prior art and the instant application. The applicant has only added a functional limitation which states that the instant application may receive a fastener much the same way as lumber would receive the fastener. The prior art applied above does have a consistency which allows a fastener to be driven in just as the fastener would be driven into lumber. For example, a hydraulic power nail gun may have enough force to pass completely through a concrete wall depending upon the strength of the gun and width of the wall. Normally, this does not happen with wide walls, but it is possible with thinner walls. That same power nail gun would also be capable of driving a fastener completely through a piece of lumber, if sized correspondingly with the concrete. Therefore, in this situation, it can be said that both material have a consistency which allows a fastener to be driven through in the same manner. Also, regarding the additional limitation at the end of claim 1, regarding the method of inserting the nail, the applicant must note that the claim is directed toward an article, not a method. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

BK

11/29/05



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600